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January 31, 2022

VIA ELECTRONIC MAIL ONLY

Caleb M. Salmon
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Re: *Cole, et al. v. ACW West Military Housing, LP, et al.*, Case No. 22-CV-044 (W.D. Okla.)

Mr. Salmon:

I am writing in regard to your repeated demands to my co-counsel, Brett Willis, requesting that our clients, AMC West Military Housing, LP ("AMC") and Balfour Beatty Communities, LLC (BBC"), disclose "the identities of [Co-Conspirators] 1-10 listed as Defendants in [Plaintiffs' Amended Petition]."¹ These requests are inappropriate, untimely, and unfounded, and should be ceased immediately.

First, at the outset, I note that it was your and your clients' decision to name these individuals as Defendants to your lawsuit. As such, it is axiomatically your and your clients' burden to identify these individuals. *See, e.g., Custard v. Balsick*, Civil Action No. 15-cv-2221-REB-CBS, 2017 U.S. Dist. LEXIS 5719, at *9 (D. Colo. Jan. 13, 2017) (noting that it is "Plaintiff's responsibility to identify each Defendant"); *Strike 3*

¹ On January 17, 2022, you filed a self-styled "Motion for Disclosure of Unindicted Co-conspirator Defendants," which was immediately stricken by the Court. (See ECF No. 4). Then, on January 27, 2022, you emailed co-counsel demanding the disclosure of the "Co-Conspirators" mentioned in Defendant Rick Cunefare's Plea Agreement with the United States Government. Today, you made another demand during a call with Mr. Willis.

Caleb M. Salmon
January 31, 2022
Page 2

Holdings, LLC v. Doe, No. 19-cv-02868-YGR, 2019 U.S. Dist. LEXIS 113938, at *4 (N.D. Cal. July 9, 2019) (“plaintiff has the burden to identify Doe defendant with enough specificity to establish that Doe defendant is a real person subject to the Court's jurisdiction”).

Second, as specifically alleged in the Amended Petition, the Coles lived in privatized military housing on Tinker Air Force Base (“Tinker”) from August 2017 to August 2018. *See* Amended Petition, Par. 49. The Coles’ allegations are exclusively limited to that time that they lived in such housing and for a period of time after they no longer lived in that housing as it relates to the final invoice from BBC. *See* Amended Petition, Par. 77-89. The Hodges’ allegations relate to the time period of 2018 to September 2019, when they similarly lived in the privatized military housing on Tinker. *See* Amended Petition, Par. 86-90. Since you chose to attach the Plea Agreements, you presumably have read both and would have noted that Mr. Cunefare’s employment with BBC ended in **2015 – years before** the factual allegations underlying your clients’ claims. *See* Amended Petition, Exhibit 1, Statement of Offense, Par. 2 & Exhibit 2, Statement of Offense, Par. 6. As such, anything relating to Mr. Cunefare has no relevancy to your clients and their allegations. If you have information to the contrary, please share such with us and we will reexamine.

Third, as it is again presumed you read both Plea Agreements, you would know that there are no “Co-Conspirators” listed in the BBC Plea Agreement. *See generally*, Amended Petition, Exhibit 1, Statement of Offense. Rather, such reference was contained only in Mr. Cunefare’s Plea, to which neither BBC nor AMC West was a party. *See generally*, Amended Petition, Exhibit 2, Statement of Offense. As such, the appropriate person to whom you should direct your request is Mr. Cunefare, a named Defendant in this action. As an aside, Mr. Cunefare’s joinder seems inappropriate based on the relevant dates outlined above and the time frame of your clients’ allegations versus the time in which Mr. Cunefare was employed by BBC. Nevertheless, your demand is inappropriately directed to BBC and AMC West. Again, if you have information to the contrary, please share such with us and we will reexamine.

Fourth, your demand for the disclosure of such information is contrary to Rule 26 and applicable law. As you undoubtedly know, Initial Disclosures must be made at or within 14 days after the parties’ Rule 26(f) conference unless otherwise ordered by the court or stipulated. *See* Fed.R.Civ.P. 26(d)(1). This matter is akin to *Callaway v. Indep. Sch. Dist.* No. 1, 2021 U.S. Dist. LEXIS 248602 (E.D. Okla. Sept. 10, 2021), where the Court did not require a Rule 26(f) conference or discovery because of defendant’s pending motion

Caleb M. Salmon
January 31, 2022
Page 3

to dismiss absent a showing of good cause by the plaintiff. Here, no good cause exists for your demands for such information.

Fifth, as there is a pending Rule 12 (b) Motion, pursuant to Local Rule 26.3(a), “no party may seek discovery from any source **before** that motion has been decided and all moving parties have filed an answer or been dismissed from the case.” (emphasis added). Thus, until discovery is permitted, as noted above, no discovery may take place. Once discovery is permitted, Plaintiffs should make a proper request for such information.

As a final note, going forward (and as already requested by Rick Morgan on January 17, 2022), please copy all counsel of record on all communications in this matter. If you have other counsel appearing on behalf of your clients, we will extend the same professional courtesy.

Regards,

/s/ Tina A. Syring

Tina A. Syring of
LEWIS BRISBOIS BISGAARD &
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cc: VIA EMAIL
Rick Morgan
Carli Pearson
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